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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/751,151	12/27/2000	John D. Marshall	EKo000200	8710

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EXAMINER	
FLANDERS, ANDREW C	
ART UNIT	**PAPER NUMBER**
2644	

DATE MAILED: 09/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/751,151	MARSHALL ET AL.	
	Examiner	Art Unit	
	Andrew C. Flanders	2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *05 August 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3,36-38 and 71-73* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-3,36-38 and 71-73* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *05 August 2005* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1, 36, and 71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loh (U.S. Patent 5,621,805) in view of Ha (U.S. Patent 6,636,609).

Regarding **Claims 1, 36 and 71**, Loh discloses:

A method for automatic digital audio mixing of at least two digital audio files (abstract), comprising:

reading at least two said digital audio files (i.e. a variety of input channels for data sources; Fig. 7);

applying a scale factor to each of said digital audio files respectively to create scaled digital audio files (i.e. a digital volume control applied to all of the input data sources; Fig. 7 element 712);

combining each of said scaled digital audio files into a single digital output file (i.e. a digital adder that produces a digital output signal; Fig. 7 element 720 and 724).

Loh does not explicitly disclose automatically determining the scale factor for each of said digital audio files based on an analysis of said at least two digital audio files by a digital processing unit.

Ha discloses automatically determining the scale factor for each of said digital audio files based on an analysis of said at least two digital audio files by a digital processing unit. (i.e. an automatic volume adjusting apparatus controlled by a microcomputer; Fig. 7; the digital signal processing unit determines the energy value and determines whether the audio signal is in a music mode or a sound mode so as to be compensated by a volume level required by a user, the tone volume control unit adjusts the volume of the audio signal output under the control of the microcomputer; col. 8 lines 4 – 20).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Loh's digital volume control with the volume control disclosed by Ha. One would have been motivated to do so in order to effectively adjust a music and a voice file respectively and to compensate for volume levels that are unevenly output within Loh's device; see further Ha col. 2 lines 15 – 26.

Regarding **Claims 2, 37 and 72**, in addition to the elements stated above regarding claims 1, 36 and 71, Loh further discloses the digital mixing is performed in computer system (abstract). Loh does not disclose the computer system as a server device operatively coupled over a network device to a client.

However, Examiner takes official notice that it would have been obvious at the time of the invention to use Loh's computer as a server coupled to other client devices over a network. It is notoriously well known to connect a computer to a network and use

it as a server. One would be motivated to do so to host a variety of media for remote users such as web pages, audio or video.

Regarding **Claims 3, 38 and 73**, in addition to the elements stated above regarding claims 2, 37 and 72, Loh further discloses:

Receiving one of said at least two digital audio files from a user (i.e. the digital mixer may receive audio signals from a compact disc, a digital audio tape, sound management software or digital signals from other sources; col. 4 lines 50 - 55).

Response to Arguments

Applicant's arguments with respect to claims 1, 36 and 71 have been considered but are moot in view of the new ground(s) of rejection necessitated by applicant's amendment.

Applicant's arguments with respect to claims 2, 37 and 72 have been fully considered but they are not persuasive.

Applicant states:

> "Applicants traverse this rejection made by the Office with respect to dependent claims 2, 37 and 72 and request that the Office provide a prior art reference or other documentary evidence to support its assertion of official notice. MPEP §2144.03."

Examiner has provided a reference to support the official notice. See Dell PowerApp Web Server User's Guide. Pages 1 and 2 disclose an Internet sever built

with standard personal computer components. This reference provides sufficient evidence to support the official notice. As such, the argument is moot and the rejection stands.

Further Applicant alleges:

> "Applicants contend that official notice cannot be taken with respect to using Loh's computer as a server coupled to other client devices over a network. Official notice with respect to generally using computers over a network is different from using a digital audio mixer or Loh's computer over a network coupled as server- to-client. There must be some form of evidence in the record to support an assertion of common knowledge. MPEP j2144.03."

Examiner respectfully disagrees. Examiner maintains the position that it is notoriously well known in the art to use a computer as a server, as is further evidenced by the enclosed Dell reference. Applicant states that "Official notice with respect to generally using computers over a network is different from using a digital audio mixer or Loh's computer over a network coupled as server- to-client". Examiner respectfully disagrees that these are different. The claim language provides no link to the mixer operating over a network, merely that the mixer is in a server which is connected to the network. Further, such a statement cannot be upheld without sufficient evidence. Applicant has not provided any evidence or argument why a PC such as Loh's, which contains a digital audio mixer, cannot be coupled to a network to operate as a server. As such the rejection stands.

Applicant further alleges:

> "Because the Office's assertion of official notice is traversed by the applicants, with respect to the third criteria listed above for establishing a

> prima facie case of obviousness, Loh does not disclose, teach or suggest all of the claim limitations found in dependent claims. In particular, Loh does not disclose, teach or suggest a server device operatively coupled over a network to a client device as in claims 2 and 72. Also, Loh does not disclose, teach or suggest the limitation of the apparatus being a server device operatively coupled over a network to a client device as in claim 37. Because Loh does not teach or suggest all of the claim limitations in claims 2, 37 and 72, a prima facie case of obviousness is not established."

Examiner considers this argument moot in view of the source to provide evidence for the traversal of the official notice. As such, the combination/modification does teach all of the claim limitations and the rejection stands.

Applicant further alleges:

> "Furthermore, applicants maintain that the first criterion for establishing a prima facie case of obviousness is not satisfied as well. This criterion requires that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art to modify the reference or to combine reference teachings. Applicants maintain that there is no suggestion or motivation, either in Loh or in the knowledge generally available to one of ordinary skill in the art to modify Loh or to combine Loh with assertions of official notice made by the Office. In particular, there is no suggestion or motivation in the prior art or in the knowledge generally available to one of ordinary skill in the art to modify Loh such that the digital mixer of Loh is provided over a network to a client device."

Examiner respectfully disagrees. As stated in the previous rejection, one would be motivated to do so (use Loh's computer as a server) to host a variety of media for remote users such as web pages, audio or video. Applicant has not questioned the motivation stated previously nor provided any evidence or information as to it not being true. Merely stating that there is no suggestion is not sufficient to overcome the suggestion stated before in the previous office action. As such the rejection stands.

Applicant further alleges:

> "In fact, Loh teaches away from modifying Loh in such a manner or combining Loh with the assertion of official notice taken by the Office for several reasons."

> "In particular, in the area of audio mixing, a user generally wishes to maintain control over each of the channel volumes in order to determine for him/herself the balance for the final mix."

Examiner respectfully disagrees with this allegation. Examiner is unclear as to how Applicant has arrived at this assumption. If applicant wishes to contend that this statement is true, Examiner respectfully requests evidence in the form of prior art or a signed affidavit under CFR 1.132. Merely making a statement of what a user wishes in the area of audio mixing cannot be upheld without sufficient evidence.

> "Loh even provides "a plurality of individual volume controls for individually adjusting the volume on each channel." Loh, col. 6, lines 1 1-14. In contrast, in the present invention, the user surrenders control over each of the channel volume to the automatic mixing system. The automatic mixing system of the present invention takes the decision regarding the final mix away from the user. In the prior art analog mixer disclosed in Loh, the volume is "selectively adjusted."

Examiner considers this allegation moot in view of the new rejections necessitated by applicant's amendment.

Applicant further alleges:

> "Loh is silent as to how the volume is to be "selectively adjusted" over a network by the user. Loh is also silent as to how the server device would "automatically" determine a scale factor as now claimed."

Examiner respectfully disagrees with this allegation. First, in the presented claim language, there is no limitation stating the volume is to be "selectively adjusted" over a network by a user. The currently presented claim states that "the method is performed within a server and that server is operatively coupled over a network device to a client device." No where in that limitation is the suggestion that there is any adjustment of the volume over a network, user or automatic.

Further, Loh is not silent as to how the server device would "automatically" determine a scale factor as now claimed. This is further evidenced above regarding the rejection of claim 1. Furthermore, Examiner considers this allegation moot in view of the new rejections necessitated by applicant's amendment.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew C. Flanders whose telephone number is (571) 272-7516. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on (571) 272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

VIVIAN CHIN
SUPERVISORY PATENT EXAMINER
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acf